

Ann P. Faitz
Faitz Law Firm PLLC

Ann P. Faitz
Email:
ann.faitz@gmail.com

585 Silverwood Trail
North Little Rock, AR 72116
W: 501.831.5637
Fax: 501.791.0966

Licensed in
Arkansas and
Missouri

SENT VIA FAX (501.683.0565) AND U.S. MAIL

March 18, 2010

Mr. Clyde Rhodes, Jr.
Chief, Hazardous Waste Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

RE: Comments to Remedial Action Decision Document (Dated February 2010)
Former Cedar Chemical Facility, Helena – West Helena, Arkansas
EPA ID No. ARD990660649 (the “Site”)

Dear Mr. Rhodes:

Please consider these comments to the Cedar Chemical Remedial Action Decision Document (RADD) being submitted on behalf of Tyco Fire Products LP, formerly known as Ansul, Incorporated, formerly known as Wormald U.S., Inc. (Wormald). Also attached are comments submitted on behalf of Wormald by its consultant, AECOM.

We appreciate ADEQ considering these comments and providing a response to each one as set out below and as set out in AECOM's attached comments.

Fact Sheet: Wormald has many times in the past advised ADEQ as to the status of Ansul's involvement at the Cedar Site, however some of the information remains incorrect in the RADD. The historical evidence and documentation located in ADEQ's files, at the Cedar Site, and in previous litigation involving the Cedar Site (referred to as “historical documents”) show that Par. 4 of the Fact Sheet should be revised as follows:

Par. 4 of the Fact Sheet should be revised as follows:

The Facility was constructed and initially owned and operated by Helena Chemical Company in 1970 for the production of propanil. The Facility was purchased by Jerry Williams, president of Helena Chemical Company, who formed Eagle River Chemical Company, which owned and operated the Facility beginning in September 1971. Ansul states on its website that it acquired Eagle River in 1971. From September 15, 1971 to November 15, 1972, Ansul was a majority shareholder in Eagle River and Jerry Williams was a minority

shareholder, during which time dinoseb was produced on the site. Jerry Williams became sole shareholder on November 15, 1972 when Ansul sold its shares back to him. Helena Chemical Company had various plant managers at the Facility from November 1972 to 1976, during which time methoxychlor, lannate and 1,2 – dichloroethane, in addition to other chemicals, were produced on the Site for various toll manufacturers. 1, 2 –dichloroethane was produced at the Site beginning in 1975 pursuant to a contract with Mobil Oil. The Facility from 1970 to 2002 manufactured . . .

If ADEQ does not agree with the above summary and the dates provided, it should reference and produce all of its documented evidence and justification for the dates and description of ownership/operation that it has provided in the Fact Sheet.

Introduction, page 1, par. 3: Exxon, HCC and Ansul voluntarily entered into a consent order, CAO LIS 07-027 with ADEQ – the CAO was not issued to them. Wormald admits that currently it is the successor to Ansul as referenced in the Introduction. Par. 3 should be revised as follows:

“On March 22, 2007, ADEQ . . . entered into Consent Administrative Order (CAO) LIS 070927 with Tyco Safety Products LP, formerly known as Ansul, Incorporated, formerly known as Wormald U.S., Inc. (Ansul) . . . “

See also Site Background, page 4, par. 2, which should be revised to state that ADEQ entered into a CAO with the other Parties and delete the word “issued.”

Site Background, page 2, par. 3: Certain dates and ownership references in par. 3 do not correlate with documentation in historic files and should be revised as follows:

“After Ansul left the Site, beginning in November 1972 to about 1976, Helena had its own plant managers at the Site, during which time the Facility was known as Eagle River Chemical and during which time Helena Chemical built and began using three unlined surface impoundments . . . “

If ADEQ does not agree with the above, it should reference and produce all of its documented evidence and justification to show that Vertac, rather than Helena Chemical, operated the Site from 1972 to 1973.

Site Background, page 5, par. 1: Similar to the description for Exxon and HCC regarding its Separate Agreement, par. 1 should be revised and clarified as follows:

“Pursuant to Par. V. 20 of the CAO, Ansul entered into a Separate Agreement with ADEQ on January 9, 2009 to conduct a further investigation of Site 3.”

Summary of Remedial Approach, page 5, par. 1: Both AMEC Geomatrix and AECOM FIs and Feasibility Studies were submitted pursuant to the CAO and both should be referenced. Par. 1 should be revised as follows:

“There was extensive investigative work performed at the Facility prior to the 2008 FI (AMEC Geomatrix, February 2009), the FS Report (AMEC Geomatrix, December 2009), the Wormald Site Investigation (AECOM, June 2009) and the Focused FS Report (AECOM, June 2009).

The FIs were necessary to obtain information to fill data gaps . . . “

Summary of Remedial Approach, p. 6, par. 2: ADEQ references “previous investigations” for its Table 1. ADEQ should provide the title and date of the investigation reports that it is relying upon for the information provided in Table 1 and Figure 3.

Table 1, page 16: While the description for AOC 1 is apparently correctly cited, some of the information in the conclusions is not consistent with historic documentation. As stated previously, Ansul’s involvement was only from Sept. 15, 1971 to November 15, 1972 when dinoseb was produced at the Site.

Tables 2A and 2B, pp 17-18: ADEQ should provide the title and date of the investigation reports that it is relying for the information provided in Tables 2A and 2B.

Recommended Remedy for Drum Vault, page 23: The COCs which are proposed to be remediated and referenced in the RADD for the drum vault as those “identified at concentrations that exceeded a regulatory level” should be specifically identified by ADEQ.

Sec II Schedule of Implementation, page 36: It is unclear as to identity and scope of persons or entities ADEQ is referring to by the term “known PRPs” since they are not named nor identified. In any event, it does not appear that any person or entity has been found to be a potentially responsible party (PRP) for the contamination or remedial action identified in the RADD either by ADEQ or by a court, nor has any person or entity admitted to such liability. Further any persons that may be found liable are not jointly and severally liable under the Arkansas Remedial Action Trust Fund Act (RATFA), under which this RADD is issued. Rather, it is the clear purpose and intent of RATFA to allocate responsibility equitably among liable parties for their allocated share pursuant to statute. As such, ADEQ has no authority to make a general requirement in the RADD to all “known PRPs” to submit plans and/or take action under the RADD and Wormald objects to this requirement. ADEQ should identify all the persons or entities to which it is addressing this directive, and provide a detailed legal justification to support its authority to impose this requirement in the RADD to “known PRPs.”

Administrative Record (AR), page 37: Since the RADD includes facts regarding ownership and/or operation of the Site, all documents upon which ADEQ relies evidencing that history should be made part of the AR. All documents listed as part of the AR should include the official title, author, and date of each document to avoid confusion. Further, all of the investigations which have been undertaken at the Site since 1990 and all related correspondence of such investigations, including, but not limited to, correspondence between ADEQ and Cedar, should be included in the AR.

General Comment regarding Site Redevelopment and Section 8, p. 28: Harcros Chemical is a potential buyer for the Site and has been actively negotiating with ADEQ to redevelop the Site for industrial use for various purposes, including reuse of equipment and buildings on site for chemical production and other activities. This redevelopment will create new, much needed jobs for the community. It is our understanding that Harcros does not desire the buildings to be razed as set out in the RADD (at a proposed cost of over \$4M), but desires many of the building to remain for its reuse. Doing so would enable Harcros to redevelop the Site and create jobs, which would in turn lower the cost of proposed cleanup, and all which could be accomplished without adversely affecting public health and the environment. Wormald supports Harcros' redevelopment of the Site and strongly urges ADEQ to work with Harcros and finalize the plan for redevelopment prior to finalizing the RADD. The RADD should be modified in keeping with redevelopment of the Site.

We request that ADEQ provide a detailed explanation as to the reasons why razing of the buildings as proposed in the RADD is necessary to protect human health and the environment; and, if this is a stumbling block to approving Harcros' proposal, the reasons why ADEQ refuses to allow Harcros to keep certain buildings to redevelop the Site.

Contact Information:

Please put the following Wormald contacts on the ADEQ mailing list for this RADD:

Ann Faitz
Faitz Law Firm PLLC
585 Silverwood
North Little Rock, AR 72116
501.831.5637
ann.faitz@gmail.com

John Perkins, CHMM
Director, Environment, Health & Safety
Tyco Safety Products
6600 Congress Avenue
Boca Raton, FL 33487
(O) 561-912-6197
(C) 561-289-1493
johnperkins@tycoint.com

Leslee J. Alexander, PG
AECOM
10 Patewood Drive Building VI, Suite 500
Greenville, SC 29615
T 864.234.3000
F 864-234-3069
D 864.234.2282 C 864.423.2107
leslee.alexander@accom.com

Thank you for consideration of these comments. Please give me a call if you have any questions.

Sincerely,


Ann P. Faitz

APF:fa
Encl.

cc: John Perkins, Tyco
Leslee Alexander, AECOM